BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

COMMENTS OF SBC COMMUNICATIONS INC.

SBC COMMUNICATIONS INC.

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SUMMARY*

The NPRM's centerpiece is a proposal to create "safe harbor" rules that would permit an advanced services carrier to be affiliated with an ILEC without being subjected to regulation as an ILEC. SBC appreciates the Commission's aggressiveness is seeking a solution to the disincentives arising from ILEC regulation, but the proposal as set forth imposes too many inefficiencies, restrictions, and unknowns. SBC continues to believe that the best way to achieve the promise of section 706 is to permit an ILEC to reap the benefits of its own efforts, investments, and efficiencies through appropriate regulatory relief. The effect of the current form of ILEC regulation is fewer new advanced services and fewer deployments than if ILECs were regulated like their competitors.

SBC is not inalterably opposed to a separate affiliate structure, however, and will give serious consideration to any final affiliate rules. To eliminate several unnecessary and significant efficiencies that SBC's competitors do not face, there are various areas that need to be accommodated in any final rules, and in such a fashion that a non-discrimination obligation does not attach to the ILEC or an advanced services affiliate. Those areas are:

- joint marketing, defined to encompass the full spectrum of marketing and customer activities;

- the transfer of existing ILEC assets and related matters without incurring "successor or assign" status;

- the transfers of ILEC employees, including work groups whose functions are transferred to the affiliate;

- the joint ownership of facilities;

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* The abbreviations used in this Summary are as defined in the main text.

- the joint use of employees and support systems;
- the ability of a data affiliate to offer interLATA data to the fullest extent possible;
- the corresponding ability to provide any other telecommunications service; and
- treatment as a requesting carrier by its affiliated ILEC.

SBC must have an ability to manage the entire enterprise in order to help make a data affiliate a viable business unit, and suggests that section 272 was the wrong model from which to begin, but rather that § 22.903 of the FCC rules is an appropriate starting point.

SBC is very concerned about the potential for inconsistent State regulatory treatment of an advanced services affiliate; the Commission must work closely with the States to ensure that any such affiliate is treated like any other CLEC for intrastate purposes.

SBC looks forward to moving toward a more favorable regulatory structure that permits SBC to fully participate in achieving section 706's goal. However, until that time, SBC will be much more strategically focused on the deployment of ADSL given the uncertainty and risks associated with widespread deployment.

Before imposing any new unbundling or collocation rules on ILECs, the FCC should resolve the remaining reconsideration petitions filed with respect to the Interconnection Order.

Many of the other issues being addressed in the NPRM are the type of issues that could have been, should have been, and probably were subject to arbitration. The Commission should not lightly decide to disturb those decisions with a generally applicable rule, or the negotiation/arbitration structure crafted by Congress will be harmed. The FCC should not engage in rulemaking unless absolutely necessary, and should instead rely on that process and

complaints to resolve individual problems. Broad, inflexible rules that fail to account for particular facts and circumstances -- the very strength of negotiations and arbitrations -- may result in unintended consequences. Where rules are promulgated, the FCC should permit State commissions to provide relief upon an appropriate showing.

The ILEC collocation obligation only extends to "equipment necessary for interconnection or access to unbundled network elements," and thus does not include enhanced services equipment, switches, or switching equipment. ILECs can agree to permit such equipment, and the SBC LECs have done so for RSMs. Any such decision would also have a detrimental effect on the ability to provision physical and virtual collocation.

Complying with safety requirements and standards is inherently reasonable and imminently negotiable; there is no need for FCC action in this area. Keeping equipment lists would be unreasonable, burdensome, and impractical. The Commission is without authority to dictate pricing structures for collocation under the 1996 Act. Negotiations and arbitrations have resulted in intervals for provisioning collocation, and determining available floorspace; there is simply no need for the Commission to engage in rulemaking on these issues.

The different forms of collocation proposed by the Commission are also better left for negotiation. The SBC LECs already offer "common area" collocation -- although no CLEC has agreed to that form -- and physical collocation in less-than-100 square feet caged areas. "Cageless" collocation is an entirely different matter because of the reasonable and legitimate security concerns raised, which have in the past been recognized and formed the basis for earlier rejection of "cageless" collocation by the FCC. There is no adequate substitute for secured

pathways and cages to protect ILEC equipment and networks; cameras and computerized tracking are insufficient *because they cannot prevent anything.*

The Commission should not adopt national standards for loops, but should focus on standards for equipment attached to loops. The Commission's proposals for access to loop information seem to be based on beliefs about the availability of the information. The information of the type envisioned by the FCC is not contained in a single database, is not always in electronic form, and involves other service information not readily available. SBC suggests that a more feasible approach would be for CLECs to submit desired loop parameters, and permit the ILEC to search for a suitable loop.

Loop spectrum management is becoming more critical each day. To address this issue, brought to the forefront by ADSL, a standards-driven approach is need to ensure service compatibility and quality. In this way, more customers can have access to high-quality advanced services than otherwise. PSD masks for individual technologies are needed, and services that are "first in" and comply with the applicable PSD mask should have priority.

Spectrum unbundling has been earlier rejected by the FCC, and is not "technically feasible" under the FCC's rules because each carrier would not retain responsibility for the management, control, and performance of its network. Spectrum unbundling raises a host of other issues that would be difficult, time-consuming, and expensive to address.

The Commission should not treat all xDSL technologies the same for loop matters; the technologies vary as do their loop characteristics.

Unbundling loops that pass through remote terminals raises issues other than technical

feasibility, including space limitations for the equipment and support equipment required (power, environmental). ILECs are under no obligation to build space for those components.

Identical loop provisioning intervals are wholly unrealistic given the different ways of provisioning a loop.

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COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc., on behalf of itself and its subsidiaries (collectively, "SBC"), files these Comments in response to the Notice of Proposed Rulemaking portion ("NPRM") of the Advanced Services Order.[1] In the Telecommunications Act of 1996 ("1996 Act"), Congress charged the Commission with "encourag[ing] the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." Section 706(a) of the 1996 Act. The NPRM has been in part issued to address section 706, but also ranges over several other

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[1] Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188, *Deployment of Wireline Services Offering Advanced Telecommunications Capability, Petition of Bell Atlantic Corp. for Relief from Barriers to Deployment of Advanced Telecommunications Services, Petition of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services, Petition of Ameritech Corp. to Remove Barriers to Investment in Advanced Telecommunications Technology, Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act, Petition of the Ass'n for Local Telecommunications Services for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996, Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91; CCB/CPD No. 98-15 RM 9244 (rel. August 7, 1998) ("Advanced Services Order").

important matters. Many of those matters are quite complex, and SBC looks forward to a continuing dialogue on issues that will affect the industry for years to come.

Consistent with the Commission's wish, SBC has attempted to follow the order of the NPRM, and its headings where practical.

I. PROVISION OF ADVANCED SERVICES THROUGH A SEPARATE AFFILIATE

The NPRM's centerpiece is a proposal to create a "safe harbor" for carriers affiliated with an incumbent local exchange carrier ("ILEC") that provide advanced data services. Subject to the conditions of any final "safe harbor" rules, such affiliates would not be an ILEC, would not be subject to section 251(c), and, further, would be treated as a non-dominant carrier for interstate purposes. The FCC's proposal recognizes the simple fact that regulation disincents ILECs from investing in and deploying advanced telecommunications capability. SBC appreciates the Commission's aggressiveness in seeking a solution to the disincentives arising from dominant treatment, and from the unbundling and wholesale discount obligations. Unfortunately, as currently proposed, the "272-like" structure for an advanced services affiliate (generally referred to herein a "data affiliate") would appear to have too many inefficiencies, restrictions, and unknowns to provide an expected return commensurate with the risks of deploying the significant investment associated with advanced services

A. The Less Regulation of ILECs, the More Likely They Will Deploy Advanced Capability More Widely As Sought by Section 706

The best way to achieve the promise of section 706 is to permit each ILEC to reap the benefits of its own efforts, investments, and efficiencies through appropriate regulatory relief for the ILEC itself. Non-incumbent local exchange carriers ("CLECs") already enjoy this ability under the 1996 Act and the non-dominant treatment afforded them by the Commission and largely by the States. Without equivalent treatment, ILECs are faced with an entirely different business and financial analyses when deciding whether to deploy advanced capabilities. Overlaying regulations that impose price constraints (retail, wholesale, averaging), add costs not required of competitors, and turn investment and other resources over to competitors indisputably operate to increase uncertainty and investment risk, and decrease return. Those factors without question affect the amount and timing of capital and effort invested by SBC in advanced telecommunications capability.

These regulatory effects are not hobgoblins in the minds of ILECs. The FCC need only observe the efforts of Internet service providers to avoid regulation. Similarly, the success of the wireless industry in competing with the wireline industry is causing it to begin arguing against the adoption of ILEC-type regulation for wireless carriers. Cellular Telecommunications Industry Association President Thomas Wheeler is starting to lobby against such regulation, arguing the "financial effects" of regulation and that the two "worst words" were "regulatory" and

"parity." "That is the quickest way to kill the kind of competitive, innovative new services that wireless is delivering."[2]

The effect of those regulations on ILEC deployment of advanced capabilities is that fewer new services are introduced and fewer locations are attractive candidates for ILEC deployment, as compared to LEC deployment, with those locations being exclusively or predominantly in metropolitan areas. That, of course, is directly contrary to the express Congressional goal embodied in section 706; deployment is supposed to be encouraged by making the introduction of services more attractive and in more locations.

A structurally integrated approach with appropriate regulatory relief would do the most to encourage ILECs to deploy advanced capability. Granting the SBC LECs' 706 petition[3] would have lessened their risk of deployment everywhere, and provided the kind of encouragement that SBC still believes Congress authorized with section 706.[4] By equalizing regulatory treatment of ILECs to that enjoyed by all other domestic carriers and competing cable companies, the FCC

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[2] *Communications Daily*, "Wireless Leaders Lobby to Avoid New Rules as Wireline Use Rises," September 22, 1998.

[3] *See Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service*, CC Docket No. 98-91, "Petition of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell for Relief from Regulation" filed June 9, 1998. Southwestern Bell Telephone Company ("SWBT"), Pacific Bell ("Pacific"), and Nevada Bell ("Nevada") are herein collectively referred to as the "SBC LECs."

[4] SBC respectfully believes that the FCC's interpretation of section 706 is incorrect, and has filed a petition for reconsideration that addresses that subject. *See* "Petition for Reconsideration of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell" filed September 8, 1998, with respect to the Advanced Services Order in the proceeding referenced in note 1.

would have helped ensure that advanced services were made as widely available as possible, on a reasonable and timely basis, and at reasonable prices.

B. Several Changes Need To Be Made to the Final Separate Affiliate Rules To Increase the Viability of the Commission's Alternative

SBC is not inalterably opposed to a separate affiliate structure, however, and will give serious consideration to any final rules that the Commission may eventually adopt. But the NPRM's separate affiliate proposal introduces several unnecessary and significant inefficiencies that SBC's competitors do not face, again all purely as a result of regulation. Moreover, the proposal also raises State regulatory issues that may not be capable of being resolved in the near term if proceedings in each State must first be favorably concluded. Those inefficiencies and delays will similarly increase the risks and possible timing of deployment and thus ultimately work against the goal of section 706.

Any separate affiliate rules must thus avoid as many artificially-imposed inefficiencies as possible to advance that goal. By keeping those inefficiencies to an absolute minimum, the investment risk faced by ILECs would be correspondingly reduced and thereby make deployment more likely and more timely to a much wider geographical area. Imposition of too many inefficiencies simply penalizes the public in terms of availability and price of advanced services like asymmetrical digital subscriber line ("ADSL").

To that end, there are various areas that need to be accommodated in any final Commission rules, and in such a fashion that a non-discrimination obligation does not attach to the ILEC or a data affiliate:

- ***Joint marketing***. The NPRM was totally silent on the issue of joint marketing even though ILECs are today permitted to joint market with "full 272" and CMRS affiliates.[5] The ILEC and its affiliated data carrier must also be able to engage in joint marketing, defined to encompass the spectrum of marketing and customer activities (*e.g.*, common branding, discounts on mixed packages of services, joint and aggregate billing, a single point of customer contact for sales and service, joint customer care, customer proprietary network information ("CPNI") treatment like that permitted with section 272 affiliates).

- ***Transfer of existing ILEC assets and related matters.*** SBC agrees with the FCC that asset transfers should be permitted from the ILEC to the data affiliate. The SBC LECs have already deployed some data infrastructure, including the recent Pacific deployment of ADSL equipment in California where favorable regulatory treatment encourages such investment. The inability to transfer such assets to an affiliate without incurring "successor or assign" status would require duplication of existing assets, having a definite negative effect on the ILEC's and the affiliate's return on those separate, redundant investments, and correspondingly the value of any separate affiliate rules. SBC thus supports establishing a "safe harbor" rule.

Such a safe harbor rule would be grounded on the application of the "successor or assign" language of section 251(h). The scope of that language has already been debated in one proceeding,[6] where the record makes clear that the scope of "successor or assign" is not so broad

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[5] *See* 47 U.S.C. § 272(g)(2); 47 C.F.R. § 22.903.

[6] *CompTel's Petition on Defining Certain Incumbent LEC Affiliates as Successors, Assigns, or Comparable Carriers Under Section 251(h) of the Communications Act*, CC Docket No. 98-39.

to encompass every transfer of any asset. The United States Supreme Court has said that "[t]here is, and can be, no single definition of 'successor' which is applicable in every legal context." Howard Johnson Co. v. Detroit Local Joint Executive Bd., 417 U.S. 249, 263 n.9 (1974). In the context of section 251(c) in light of the goals of section 706, transferring a relatively insubstantial amount of recently-deployed assets to an affiliate when the ILEC retains the core of its network (the so-called "bottleneck" loops, voice switches, operations support systems) does not make such an affiliate a "successor or assign" under section 251(h).

In the alternative and as necessary, the Commission should forbear from the application of section 251(h) pursuant to section 10.[7] The three-part test is clearly met: (i) with a structurally separation affiliate, enforcement of section 251(h) is no more necessary to ensure that the affiliate's charges and practices are just and reasonable as it is necessary to regulate the existing non-dominant carriers already offering advanced services; (ii) for the same reason, enforcement of section 251(h) is not necessary for the protection of consumers, but indeed forbearance would be aimed at benefiting customers by helping to achieve the goals of section 706; and (iii) forbearance would clearly be in the public interest for the reasons that prompted the FCC to propose the separate affiliate structure.

As to the "safe harbor" rule itself, SBC supports a rule that delineates the parameters of transfers that will not result in "successor or assign" status for the data affiliate, as well as one that clearly indicates that a non-discrimination obligation does not apply to the transfer. That

[7] 47 U.S.C. § 160. Note that if section 10 forbearance is used, State commissions would be foreclosed by section 10(e) from treating such an affiliate as an "incumbent LEC" under federal law.

rule should specify what assets, if transferred, would impose that status, rather than listing what can be transferred. Such a structure would ensure that the assets of most concern to the FCC stay with the ILEC (voice-circuit switches; loops, NPRM, ¶ 107), while not precluding the assets used to provide advanced services (DSLAMs, packet switches, transport facilities, NPRM, ¶ 108) and other assets that would not otherwise result in "successor or assign" status (office furniture, non-network real estate, NPRM, ¶ 114).

To the extent that the assets are deployed in ILEC network premises, the FCC should grandfather those assets in place instead of requiring that they be removed and service disrupted.

Of course, assets acquired by the affiliate from sources other than an affiliated ILEC provide no basis for "successor or assign" status, even if acquired under a contract equally available to the ILEC.[8] NPRM, ¶ 105. The minimal requirement of "successor or assign" status requires *something* be transferred; acquisitions from third parties certainly do not qualify.

For that same reasons, capital contributions or loans from a common parent or affiliate cannot make the data affiliate an ILEC or otherwise impose any regulatory burdens -- even if those funds could ultimately be traced to dividends paid from the ILEC to its shareholder parent.

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[8] Companies often negotiate contracts that permit the other members of an affiliated group to make purchases under those contracts under the same terms and conditions. SBC is no different. The fact that a contract may be in the name of an ILEC does not transform a purchase by the affiliated data carrier from the vendor under such a contract, into an asset transfer from the ILEC.

NPRM, ¶ 113. The earnings of an ILEC and hence its dividends are shareholder property,[9] and can be used to establish a data carrier without any "status carryover" to that new carrier.

Finally, the ILEC must be able to transfer or assign customers to the data affiliate when the assets serving a customer we also being transferred. Otherwise, service disruption will ensue, and the viability of the data affiliate would be questionable.

The asset transfer area is a matter of particular concern given State transfer rules that apply to ILECs. If State proceedings significantly affect what assets can be transferred and when, the ability to use the FCC's structure may be foreclosed by market realities that demand a quicker response. Due to these State issues, limiting a "safe harbor" rule to a set period of time could very well preclude ILECs from taking advantage of the rule. NPRM, ¶ 111. At most, the timing should begin to run upon obtaining any State rulings deemed appropriate.

- ***Transfers of ILEC employees***. The ILEC will need to transfer personnel with the transfer of assets or functions, or when otherwise establishing a new affiliate. It would be unreasonable to require that every employee for the new affiliate be hired off of the street. Depending upon the scope of the data affiliate's business, the transfer of a work group may be appropriate. The Commission should conclude that any such transfer of employees would not make a data affiliate a "successor or assign" of an ILEC or forbear from 251(h) as above. NPRM, ¶ 113.

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[9] Bd. of Public Utility Commissioners v. New York Telephone Co., 271 U.S. 23, 31, 32 (1926) ("The revenue paid by the customers for service belongs to the company. . . Property paid for out of moneys received for service belongs to the company, just as does that purchased out of proceeds of its bonds and stock.").

- ***Joint ownership of facilities.*** The ILEC and its affiliated data carrier should be able to jointly own switches and other facilities. That ability will be especially critical in rural and high-cost areas where maintaining two separate sets of facilities would make deployment of data services costly and less likely to occur.

- ***Joint use of employees and support systems***

- ***The ability to offer interLATA data to the fullest extent possible.*** The FCC has proposed to provide some ability for BOCs and their affiliates to provide interLATA data service. NPRM, ¶¶ 190-196. SBC believes that such an ability is first and foremost in the public interest, would further the goal of section 706, and is also absolutely critical to the viability of SBC's data services especially if provided through a separate data affiliate. SBC supports each of the Commission's proposals. Providing LATA boundaries for the purpose of bringing advanced services to schools under the circumstances outlined by the FCC in paragraph 192 would be both authorized and reasonable. SBC also supports relief to permit packet-switched traffic to be carried across LATA boundaries to connect to a network access point ("NAP"). This relief is especially critical in rural areas where demand for high-speed access is not being met (either in terms of bandwidth or throughput). NPRM, ¶ 194.

- ***The ability to provide any other telecommunications service.*** The data affiliate should not be limited to data services, but should be fully able to provide any interstate service it wishes on a non-dominant basis. This is another area where the State treatment of the data affiliate can significantly affect the viability of the affiliate. If the data carrier's intrastate

offerings are restricted differently than other CLECs, especially in providing access and/or data services, interstate offerings may be simply insufficient to make the entity economically viable, especially if the ILEC might have to deploy equipment to provide the intrastate counterpart.

- ***Treatment as a requesting carrier by its affiliated ILEC.*** Consistent with the fundamental purpose of the FCC's proposal, the data affiliate should not be accorded treatment less than that given any other requesting carrier, given the same priority (no more, no less), and be able to deal with the ILEC as any other carrier is able to (*e.g.*, purchase UNEs, physical and virtual collocation, services for resale).

At bottom, SBC must have an ability to manage the entire enterprise in order to help make a data affiliate a viable business unit. SBC respectfully suggests that the Commission picked the wrong structural separation model from which to start modifying. Instead of section 272, the FCC should look to § 22.903 of its own rules as the appropriate starting point, and modify that structure consistent with the above. Historically, a § 22.903-like structure would much more likely permit the creation of a viable business unit in a new and expanding market, ensuring an adequate amount of separation while permitting sufficient management of the new business. In contrast, section 272 is a new, unproven form of separation wholly inappropriate for an emerging market like high-speed data.

Moreover, the Commission should also make clear that the organizational location of a data affiliate does not affect its treatment. For example, to further the goal of "one stop" shopping and achieve operational and management efficiencies, SBC might want to make the

data affiliate a subsidiary of a 272 affiliate. That structure and its common management should not infect the regulatory treatment of the data affiliate

C. Potential for Inconsistent State Treatment of the Data Affiliate Raises Significant Concerns

As noted above, SBC is very concerned about the potential for inconsistent State regulatory treatment of a data affiliate, especially as compared to its competitors. If the data affiliate is treated like an ILEC under State law or is subject to analogous State unbundling and resale obligations, then SBC will have inserted artificial inefficiencies and costs into its business without a corresponding return or other benefit. This is perhaps the greatest unknown and the most worrisome aspect of the scope of the Commission's proposal, particularly given the rapid development of the advanced data services market and the time needed to address these issues in the individual States. The Commission must work closely with the State commissions in order to ensure that the proposed data affiliates are treated like any other CLEC for intrastate purposes. Otherwise, the FCC's data affiliate proposal may be inherently flawed and unable to meet the Commission objectives.

SBC nevertheless pledges to work with the FCC and other stakeholders to help fashion a regulatory structure that helps achieve the promise of section 706 and the FCC's and State commission's respective initiatives. SBC looks forward to moving toward a favorable regulatory structure that will allow SBC to fully participate in helping to fulfill the promise of section 706: the deployment of advanced technology and services to all Americans on a reasonable and timely basis.

However, until the ground rules on advanced data investments and services are favorably changed or modified, SBC will be much more strategically focused on the deployment of ADSL services beyond its current commitments. There is too much uncertainty and risks associated with widespread deployment in the SBC LECs given current regulation and reasonably expected returns. More favorable regulatory treatment will be needed before mass deployment of advance technologies can be considered by SBC. Without such treatment, the SBC LECs may ultimately need to limit the deployment of advanced technology to metropolitan areas only -- exactly what Congress wished to avoid by enacting section 706.

II. BEFORE IMPOSING NEW OBLIGATIONS ON ILECS, THE COMMISSION SHOULD RULE ON THE REMAINING 96-98 PETITIONS FOR RECONSIDERATION AND CLARIFICATION

With the NPRM, the FCC has proposed to impose unbundling and collocation obligations on incumbent LECs that go beyond those adopted in the Interconnection Order.[10] In some areas, the FCC is even proposing to reverse earlier longstanding decisions. Before building upon or changing its policies, the FCC must address the remaining petitions for reconsideration and/or clarifications that were filed almost two years ago which address the same subject matters being addressed here. The resolutions of those petitions are critical to the NPRM, not to mention

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[10] First Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499, ¶ 282 (1996) ("Interconnection Order"), *vacated in part on other grounds*, Iowa Utilities Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), *amended on reh'g*, 1997 U.S. App. LEXIS 28652 (October 14, 1997), *cert. granted sub nom.* 66 U.S.L.W. 3490 (1998).

incumbent LECs, requesting carriers, the States, and the Courts in implementing the 1996 Act. At least one petition addresses the allocation of space for collocation purposes.[11] Accordingly, the FCC should move expeditiously to resolve these long pending issues before adopting more requirements which will likely raise and might compound additional issues.

III. MEASURES TO PROMOTE COMPETITION IN THE LOCAL MARKET

In reading the NPRM, SBC is struck by the fact that there are few references to State commission decisions. In the over two years since the 1996 Act became effective, the issues being raised by carriers with the FCC are matters that could have been, should have been, and SBC believes have been subject to arbitrations before State commissions. Those arbitrations were based upon evidence presented by witnesses who were subject to questioning by the arbitrator and usually cross-examination by adverse parties. The Commission should not lightly decide to disturb those decisions with a generally applicable rule, or the negotiation/arbitration structure carefully crafted by Congress will be harmed

In that same vein and as a matter of considered discretion, the FCC should not engage in rulemaking where further negotiation, or an arbitration or a complaint would be more appropriate. If a carrier has a specific complaint about an ILEC's practices, then testing those allegations under the complaint process is more appropriate than engaging in generally

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[11] "Petition of the Local Exchange Carrier Coalition for Reconsideration and Clarification" filed September 30, 1996, in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-98 and 95-185.

applicable rulemaking. Many of the particular complaints that carriers have lodged are better resolved through negotiation, arbitration, or complaint, rather than adopting a broad rule that will invariably apply to all ILECs in all situations without room for addressing particular facts and circumstances. Using a broad rulemaking approach only complicates an already complicated process, and wholly fails to take into account specific factual situations. Hastening into rulemaking could very well have negative unintended consequences that would be avoided using the other resolution processes available. SBC urges the Commission to avoid issuing rules unless absolutely necessary. Where such necessity exists, the Commission should recognize that a "one size, fits all" approach will not always be appropriate, and permit relief from its rules by an appropriate showing to a State commission.

A. Collocation Requirements

1. The Collocation Obligation Only Extends to "Equipment Necessary for Interconnection or Access to Unbundled Network Elements"

Regardless of the desires of requesting carriers, ILECs are only obligated to permit the physical or virtual collocation of "equipment necessary for interconnection or access to unbundled network elements at the [ILEC's] premises." 47 U.S.C. § 251(c)(6). Unless equipment falls within that requirement, Bell Atlantic v. FCC, 24 F.3d 1441 (D.C. Cir. 1994) remains good law and an ILEC may lawfully refuse to allow other equipment to be placed on its premises. A prime example of a category of equipment outside of section 251(c)(6) is information or enhanced services equipment; such equipment is by definition not necessary for

interconnection or access to UNEs. The Commission should accordingly adopt its tentative conclusion to that effect. NPRM, ¶ 132.

At the same time, an ILEC may decide to permit the collocation of "non-qualifying" equipment. In fact, SWBT decided in 1996 to permit the negotiated placement of remote switch modules ("RSMs") in physical collocation space even though not required, and even though rejected by the FCC. Such equipment is not necessary for interconnection or access to UNEs, but instead is used by carriers to actually provision services from ILEC premises. Pursuant to mutually agreeable terms and conditions (which includes space availability, technical and operational matters), the SBC LECs have been willing to permit RSM placement even though not required under the 1996 Act and does not constitute collocation.

The Commission should therefore not include switches or other switching equipment in the category of equipment that must be collocated. There is no record supporting any determination that each and every piece of such equipment constitutes as "equipment necessary for interconnection or access to [UNEs]," and indeed there cannot be. Using a Lucent 5ESS switch to connect to an unbundled loop simply cannot be determined to be "necessary" without effectively ignoring the statutory language. Congress did not impose a 'duty to provide for physical collocation of equipment at the premises of an ILEC:' Congress instead required that physically collocated equipment meet a standard encompassing both a purpose and requisite need. Switches and switching equipment do not meet that requirement.

Moreover, the Commission must remain cognizant of the operational and administrative effects of expanding to include switches and switching equipment. Switches can consume a large amount of space (*e.g.*, 2,400-3,000 square feet is not uncommon for a switch in a metropolitan area, with the possible need for more than one switch). By contrast, the typical collocation space is usually 100 square feet. In major metropolitan areas, where demand for physical collocation is the greatest, space is exhausting quickly. In the aggregate, the SBC LECs are already out of physical collocation space in no fewer than 25 central offices (primarily in major California metropolitan areas with one in the Dallas, Texas, area). Requiring ILECs to provide space for switching equipment will only accelerate the exhaustion of available space.

Requiring switches and switching equipment to be permitted in physical collocation arrangements also equally expands an ILEC's virtual collocation obligation. As the Commission is aware, virtual collocation requires ILECs to install, operate, and maintain the collocated equipment selected by the requesting carrier. Unless that carrier selects the same equipment already being used by the ILEC, its personnel must be trained to perform those tasks. Switches and switching equipment are much more complicated to operate than, for example, an optical terminal; meeting the FCC's operational standard for a virtually collocated switch by training personnel or by using a third party vendor would be incredibly impracticable if not practically impossible. The SBC LECs submit that it would be patently unreasonable to require virtual collocation of as many different switches as various requesting carriers may decide.